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**REPORT TO THE COMMITTEE ON  
GOVERNMENT EFFICIENCY AND OPENNESS**

**REVIEW OF CHARTER SECTION 42, MEMBERSHIP SELECTION**

**INTRODUCTION**

San Diego City Charter section 42 addresses the selection of members to serve on City boards, commissions, committees, and panels. In particular, this section requires that the appointing authority, when selecting appointees to such boards and commissions, consider the appointee's sex, race, and geographical area to ensure that the membership reflects the diversity of the community. There are no specific procedures that implement the requirements of this City Charter section. Earlier this year, Councilmember Donna Frye suggested that materials submitted by the Mayor in support of appointments subject to City Council confirmation identify the appointees' area of residence and Council District to assist in complying with the Charter requirement. The Mayor's Office has agreed to provide that information, however, it has been suggested that this procedure be formalized. In that regard, the Office of the City Attorney has been asked to review City Charter section 42 and provide recommendations for implementing the requirements through the San Diego Municipal Code.

**DISCUSSION**

City Charter section 42, "Membership Selection," states:

The appointing authority in selecting appointees to commissions, boards, committees or panels shall take into consideration sex, race and geographical area so the membership of such commissions, boards, committees or panels shall reflect the entire community.

The above section was added to the City Charter in 1973 with the passage of Proposition K. On February 4, 1974, this office issued a memorandum regarding implementation of the new charter provision.<sup>1</sup> According to the memorandum, the provision was aimed at diminishing discrimination and establishing a broader representative base in appointments to commissions, boards, committees, and panels. The provision requires that the appointing authority "take into consideration" certain factors so that membership in City boards

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<sup>1</sup> A copy of the February 4, 1974, memorandum is attached as Attachment "A."

and commission reflect the community. The Mayor is the appointing authority in most instances, and as such, is required to consider the diversity of the board or commission when selecting appointees. The memorandum suggested that, if the Council is concerned that the objectives of City Charter section 42 are not being met, the Council can withhold confirmation.

A few years later, the question arose as to whether the boards and commissions that do not meet the diversity goals are legally constituted. In a memorandum from this Office dated May 12, 1978, this Office opined that the requirement to take certain factors into consideration was “a stated objective” rather than a mandatory requirement.<sup>2</sup> In that regard, the ballot argument written by the drafters of Proposition K stated that the objective is: “to the end that membership on such City organized citizen groups reflects as broad and varied segment of the entire community as is possible.” (emphasis added). As a practical matter, it may not be possible to achieve diversity on all boards and commissions. The appointing authority is required to use his or her best efforts in achieving the diversity goals. The memorandum concluded that there was no information that appointments were made without taking into consideration sex, race, and geographical area, and accordingly the boards and commissions were legally constituted.

Although there is no specific implementing language in City Charter section 42, the Council retains the inherent authority to decline to confirm mayoral appointees that do not, in their opinion, meet the diversity objectives of the City Charter. In addition, the Council has adopted procedures for Mayor and Council appointments. Council Policy 000-13 describes the nomination procedures and restates the requirement that the Council take into consideration the sex, race, and geographical area of its appointees so that the membership of boards and commissions reflect the composition of the entire community. Accordingly, the Council Policy would be a logical place to add any implementing procedures. For example, the Council Policy could be amended to require that the Council be provided with each appointee’s area of residence and Council District to assist with the goal that membership in boards and commissions reflect the various geographical areas of the City.

The Council also could adopt implementing language that would be added to the Municipal Code. In that regard, Council Policy 000-01 states: “Regulatory policies established by the City Council usually are adopted by ordinance and included in the Municipal Code. However, other policies also are established which by their nature do not require adoption by ordinance.” In this instance, the Council has adopted Council Policy 000-13 to establish procedures for appointments to boards and commissions. Accordingly, an amendment to Council Policy 000-13 would be appropriate and may provide greater flexibility in applying the policy to the various and diverse types of boards, commissions, committees, and panels, some of which have specialized selection criteria. Finally, any proposed implementation procedures would require additional research to determine whether consideration of the race and sex of an appointee is a violation of state or federal laws regarding discrimination or preferences.

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<sup>2</sup> A copy of the May 12, 1978, memorandum is attached as Attachment “B.”

### **CONCLUSION**

City Charter section 42 has the objective of providing the City with diverse representation of citizens on its boards, commissions, committees, and panels. The Council has the power to decline to confirm appointments that do not, in its opinion, meet the diversity objectives. If additional implementation language is desired, an amendment to Council Policy 000-13 would be appropriate. However, this office is ready to assist in drafting language to amend either the Council Policy or the Municipal Code to more fully implement the City Charter requirements, as directed by this committee.

Respectfully submitted,

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MJA:CMB:jb  
Enclosures  
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